IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	
PHILLIPS ELEVEN HUNDRED, LTD.	§	**Case No. 03-34448 HDH-11**
	§	
Debtor	§	

FINDINGS OF FACT AND CONCLUSIONS OF LAW
ON MOTION OF BEAL BANK, S.S.B.
FOR RELIEF FROM THE AUTOMATIC STAY

Pursuant to Rule 52 of the Federal Rules of Civil Procedure, made applicable herein by Rule 7052 of the Federal Rules of Bankruptcy Procedure, the Court enters the following Findings of Fact and Conclusions of Law in connection with the Motion for Relief from the Automatic Stay (the "Motion") filed by Beal Bank, S.S.B. ("Beal").

FINDINGS OF FACT

1. On or about May 2, 2003 (the "Petition Date"), Phillips Eleven Hundred, Ltd. (the "Debtor") commenced the above-referenced case by filing a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). Since the Petition Date, the Debtor has continued to operate as a debtor-in-possession.

2. The Debtor is a Texas limited partnership. The original general partner of the Debtor was Land Advisors, Inc. ("Land Advisors"), a Texas corporation, owned and controlled by Dan O. Tomlin, Jr.

3. LSR Developments, Inc. ("LSR"), is a Texas corporation, owned and controlled by Dan O. Tomlin, III.

4. Prior to the Petition Date, on or about October 31, 2002, Beal made a loan to the Debtor. The loan is evidenced in part by a Promissory Note in the original face amount of $12 million (the "Debtor Note"). Beal is the owner and holder, and in possession, of the original Debtor Note.

5. The Debtor Note is secured by, among other things, a Deed of Trust, Security Agreement and Assignment of Leases and Rents, dated as of October 31, 2002 (for purposes of the Motion, the "First Lien Deed of Trust"), executed by the Debtor and granting Beal a first lien on the property described therein (the "Property").

6. The Property consists of approximately 1,000 acres of real property, located in Denton County, Texas.

7. The Debtor has defaulted on its obligations under the Debtor Note. As of and including August 1, 2003, under the Debtor Note Beal asserts and, for purposes of this Motion, the Court finds the sum of $12,511,523.50 was due and owing using the non-default rate of interest, and the sum of $12,712,071.45 was due and owing using the default rate of interest. Under the Debtor Note, Beal asserts, and for purposes of this Motion, the Court finds that interest continues to accrue, using the non-default interest rate, at $4,166.67 per day and, using the default interest rate, at $5,753.42 per day.

8. On or about March 2, 2000, Beal made a loan to LSR. The LSR loan (the "LSR Loan") is evidenced in part by a Promissory Note in the original face amount of $35 million (the "First LSR Note"). Beal is the owner and holder, and in possession, of the original First LSR Note.

9. The First LSR Note is secured by, among other things, a Deed of Trust, Security Agreement and Assignment of Leases and Rents, dated as of March 2, 2000, executed by the Debtor

and granting Beal a second lien on the Property (for purposes of this Motion, the "Second Lien Deed of Trust").

10. On or about June 10, 2002, the LSR Loan was amended to increase the maximum principal amount by $8,215,000.00. The increase was evidenced by another Promissory Note (the "Second LSR Note"). Beal is the owner and holder, and in possession, of the original Second LSR Note. (The First LSR Note and the Second LSR Note are collectively referred to herein as the "LSR Debt.")

11. The Second LSR Note is secured by, among other things, a Subordinate Deed of Trust Security Agreement and Assignment of Leases and Rents, dated as of June 10, 2002, executed by the Debtor and granting Beal a third lien on the Property (the "Third Lien Deed of Trust").

12. The Debtor argued in court that the First Lien Deed of Trust was not a first lien. The order of Beal's lien is not particularly relevant for purposes of the Motion. For purposes of this Motion, Beal has a perfected first and prior security interest in the Property of the Debtor's estate.

13. In connection with the First LSR Note and the Second LSR Note, the sole general partner, and each of the limited partners of the Debtor, executed and delivered to Beal certain Certificates and Consents of Partners of the Debtor (dated January 12, 2000, and June 4, 2002, respectively) (hereinafter, the "Consents") by which each represented and warranted to Beal, among other things, that (i) the Debtor was fully authorized to pledge the Property as collateral for the LSR Debt, (ii) each of the limited partners had fully discussed all aspects of the LSR Debt transactions with the Debtor's general partner, (iii) each of the limited partners had received copies of all requested documents regarding the LSR Debt transactions, (iv) each of the limited partners had been provided an opportunity to review (and had either reviewed or elected not to review) all of the documents regarding the LSR Debt transactions, and (v) each of the limited partners understood and

agreed with the terms and provisions of the LSR Debt transactions. Debtor has challenged the Consents. The burden of proof on the validity of Beal's lien is on the Debtor. *See*, 11 U.S.C. § 362(g)(2). Debtor and limited partners did not prove the invalidity of the Consents by a preponderance of the evidence.

14. The Debtor Note and the LSR Debt are cross-defaulted.

15. Debtor has filed an adversary proceeding seeking to avoid one or more of Beal's liens. The avoidance of a lien cannot occur in a motion to lift stay. Such matters will await trial in the adversary. However, because the validity of the Beal liens is an element of the motion to lift stay, the challenge to the Consents is before the Court and is decided. The Court does not intend to revisit the Consent issue in the adversary proceeding.

16. LSR is in default on its obligations under the LSR Debt, and Beal has accelerated the LSR Debt. As of and including August 1, under the LSR Debt, Beal asserts and, for purposes of this Motion, this Court finds the sum of $31,178,980.14 was due and owing using the non-default rate of interest, and $31,363,718.89 was due and owing using the default rate of interest. Under the LSR Debt Beal asserts, and for purposes of this Motion, this Court finds that interest continues to accrue, using the non-default rate of interest, at $12,904.80 per day and, using the default rate, at $14,959.71 per day.

17. As of and including August 1, 2003, the collective indebtedness under the Debtor Note and the LSR Debt is claimed to be $43,690,503.64 using the non-default rates of interest, and $44,048,443.34 using the default rates of interest.

18. The Debtor has not made any post-petition payments to Beal on the Debtor Note.

19. Beal's first and junior liens slightly exceed the value of the Property, secures such liens. Looking solely at the Debtor's 1000 acre tract, there is no equity cushion over Beal's lien.

20. The Property is currently held for future development or sale, and it does not generate material current income.

21. Beal's relationship to the Debtor is a lender-borrower relationship.

22. Beal does not have a relationship to the limited partners of the Debtor. Beal never spoke to or otherwise communicated with the limited partners prior to the LSR Debt transactions.

23. The limited partners knew or should have known that LSR was affiliated with Land Advisors.

24. The limited partners voluntarily executed the Consents and thereby agreed to all of the terms of the LSR Debt transactions, including, without limitation, the Second Lien Deed of Trust and the Third Lien Deed of Trust.

25. Beal did not defraud the limited partners in connection with the Consents.

26. The Court finds Beal did not conspire with Land Advisors, LSR, any of their affiliates or representatives to defraud the Debtor or the limited partners in connection with the Consents.

27. Mr. Francois Rilliet, the representative of the Limited Partners, had authority to execute the Consents on behalf of the limited partners. Mr. Rilliet did, in fact, execute the Consents on behalf of the limited partners. It was not shown at the hearing that the Consents were obtained by Beal by fraud.

28. Mr. Sherman G. Wyman, the manager of the Debtor's current general partner, offered credible testimony regarding the Debtor's ability to reorganize or to sell the Debtor's property within a reasonable period of time.

29. Debtor has reached a contract for the sale of the Debtor's property. The sale is presently in progress and has a reasonable prospect of closing within a reasonable period of time.

The contract may be the best evidence of present value of the Debtor's property. That contract shows that the Debtor does not have equity over and above Beal's liens.

30. Any finding of fact determined to be a conclusion of law shall be deemed so.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties and subject matter of this action.

2. All of the limited partners of the Debtor have intervened and are before this Court for all purposes.

3. Venue is proper in this Court.

4. For purposes of this Motion, the Court finds that the First Lien Deed of Trust is valid, perfected and enforceable.

5. For purposes of this Motion, the Court finds that the Second Lien Deed of Trust is valid, perfected and enforceable.

6. For purposes of this Motion, the Court finds that the Third Lien Deed of Trust is valid, perfected and enforceable.

7. The Consents are valid and enforceable as to Beal.

8. The Court finds, pursuant to §362(d)(2)(A), that the Debtor has no equity in the Property above Beal's secured first and junior liens.

9. The Court finds, pursuant to §362(d)(2)(B), that the Property is necessary for the Debtor's reorganization, and that a reorganization is in progress. The Debtor has a contract for the sale of Debtor's property. Debtor has filed a plan and disclosure statement.

10. The Court finds, pursuant to §362(d)(1), that Beal's interests in the Property are adequately protected at the present time. The testimony indicates that the Property, raw land, is increasing in value. However, the status quo cannot be maintained over the long term. The Debtor

must either successfully avoid one or more of Beal's liens, sell the Property, or confirm a plan of reorganization to retain the protections of the Bankruptcy Code, including the automatic stay.

11. Cause exists, pursuant to §362(d)(1), for lifting the automatic stay to enable Beal to post the Property for a January 2004, foreclosure sale. The stay will be lifted to proceed with the sale in January unless the Debtor confirms a plan, sells the Property, or avoids one or more of Beal's liens prior to that time.

12. The Debtor shall schedule a hearing on its Disclosure Statement by October 28, 2003. The Debtor shall obtain a hearing on confirmation of its plan of reorganization as well as a special setting in the adversary proceeding in which the Debtor seeks to avoid Beal's liens in early December, 2003.[1]

13. Absent further order of this Court, if the Debtor fails to confirm a plan of reorganization, sell the Property, or avoid one or more of Beal's liens by January 5, 2004, the stay will be lifted to allow Beal to proceed with foreclosure on January 6, 2004.

14. Any conclusion of law determined to be a finding of fact shall be deemed so.

SIGNED: 9/5/03

Harlin D. Hale
United States Bankruptcy Judge

[1] This ruling necessitates additional court time for all sides. However, the basic facts were shown in the motion to lift stay. Most discovery appears to have been conducted. All sides have briefed issues which have been raised in the adversary. Because the plan is a liquidating plan, the parties ought not spend considerable time litigating the disclosure statement. All parties are cautioned not to wait regarding the scheduling of hearings because the Court's calendar appears to be filling up.